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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,565	08/28/2001	Dirk Lenz	Beiersdorf 738-KGB	5014
27384	7590	12/01/2005	EXAMINER	
NORRIS, MCLAUGHLIN & MARCUS, PA 875 THIRD AVENUE 18TH FLOOR NEW YORK, NY 10022			SALVATORE, LYNDIA	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/940,565

Applicant(s)

LENZ, DIRK

Examiner

Lynda M. Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,3-6,8 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's remarks filed 9/16/05 have been fully considered. Applicant informed the Examiner during a phone conversation on September 15th, 2005 that claim 13 was not examined on the merits in the last Office Action. At that time, the Examiner informed Applicant that a complete listing of the claims including claim 13 was not present in the file. As such, the Examiner requested a complete claim listing to be included in the response to the Non-Final Office Action dated 2/15/05. The Examiner informed Applicant that upon receipt of said claim listing, if claim 13 was not examined as a result of an Examiner error, the Examiner would issue another Non-Final Office Action for claim 13. However, in reviewing Applicant's listing of claims, it was discovered that claim 13 is a process claim (Applicant elected to prosecute article claims 1-6, 8 and 9 in the Office Action dated 7/28/03). Therefore, claim 13 is already withdrawn. Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 8 and 10 stand rejected under 35 U.S.C. 102(e) as being anticipated by Newkirk et al., US 6,417,121 for reasons set forth in section 4 of the last Office Action.

Applicant argues that the prior art of Newkirk et al., fails to teach bonding the laminate comprising a spunbond nonwoven layer and a carded nonwoven web of staple fibers by

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ultrasonic welding. Applicant asserts that the limitation of ultrasonic welding is not method limitation but a descriptive term of the bonding in the final product. This argument is not found persuasive.

With regard to Applicant's argument that the limitation of ultrasonic bonding is not a method limitation, it is the position of the Examiner that the claimed final product only requires that the layers be nondetachably bonded together. As such, Newkirk et al., teach laminating the spunbond non-woven layer to the carded staple fiber layer by adhesive, spot, point, calendaring or through-air-bonding (Column 13, 60-Column 14, 9). The Examiner asserts that any one of these methods would result in laminate with nondetachable layers. Applicant has not sufficiently evidenced that the method of ultrasonic welding produces a patentably distinct final product over the laminate produced by the prior art. The method of ultrasonic welding melt bonds or fuses at specific locations. The methods taught by Newkirk et al., appear to be functionally equivalent to the claimed ultrasonic welding method and the record continues to lack any evidence to the contrary.

5. Claims 1, 3-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gessner et al., US 5,997,989 in view of Newkirk et al., US 6,417,121 for reasons set forth in section 7 of the last Office Action.

Applicant argues a lack of motivation to combine references on the grounds that the prior art of Newkirk et al., teach non-woven layers comprising a blend of polypropylene and polyethylene. Applicant asserts that the prior art of Newkirk et al., exemplifies non-woven layers comprising a blend of polypropylene and polyethylene instead of the claimed polypropylene. This argument is not found persuasive.

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Applicant's open claim language of comprising does not preclude providing non-woven layers comprising a blend of polypropylene and polyethylene. The Examiner maintains that sufficient motivation exists to combine references on the grounds that the prior art of Gessner et al., is silent with respect to the carded web materials. As such, it is proper to look to the prior art to identify suitable non-woven web forming materials. The secondary reference of Newkirk et al., was relied upon to teach a laminate comprising a carded polypropylene non-woven layer. Since both references are considered analogous art, the Examiner maintains that sufficient motivation exists to combine references.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 18, 2005

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TERREL MORRIS
SUPERVISORY PATENT EXAMINER
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